

Appeal from separate decisions of the Colorado State Office, Bureau of Land Management, declaring unpatented mining claims abandoned and void. CMC-156116, CMC-198814.

CMC-156116 affirmed; CMC-198814 reversed.

1. Federal Land Policy and Management Act of 1976: Recordation of Affidavit of Assessment Work or Notice of Intention to Hold Mining Claim--Mining Claims: Abandonment

BLM properly declares a mining claim abandoned and void pursuant to sec. 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. | 1744(a) (1982), where a mining claimant files a single affidavit of assessment work for a group of claims but omits the name and serial number of a claim and the affidavit provides no other means of identifying the omitted claim.

2. Federal Land Policy and Management Act of 1976: Recordation of Affidavit of Assessment Work or Notice of Intention to Hold Mining Claim--Mining Claims: Abandonment

A decision declaring a mining claim to be abandoned and void pursuant to sec. 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. | 1744 (1982), will be reversed if the mining claimant had filed an affidavit of assessment work for a group of claims that properly listed the BLM serial number for the claim at issue even though the name of the claim was not stated.

APPEARANCES: George M. Wilk Wilkinson, pro se.

OPINION BY ADMINISTRATIVE JUDGE IRWIN

George M. Wilk Wilkinson has appealed from separate decisions of the Colorado State Office, Bureau of Land Management (BLM), dated December 27,

1985, declaring the Kleptomaniac mining claim (CMC-156116) and the Gold Chance mining claim (CMC-198814) abandoned and void for failure to file an affidavit of assessment work or notice of intention to hold the claim as required by section 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. | 1744 (1982). BLM determined that no affidavit or notice was filed in 1982 for the Kleptomaniac claim and that no affidavit or notice was filed in 1984 for the Gold Chance claim. Appellant states that each claim is part of a contiguous block of claims, and correctly observes that a single proof of labor may be submitted for a contiguous block of claims.

[1] Appellant contends that "a claimant may file a late proof of labor to hold his mining claim current, so long as there are no intervening rights or new locations on the lands" and states he did not intend to abandon the claims. Although a late filing may not result in an abandonment of a claim under the recording statutes of certain states, see generally 2 Am.L. of Mining, | 45.05[1][b][ii] (2d. ed. 1984), an affidavit of assessment work or notice of intention to hold the claim must be timely filed in order to preserve a claim under 43 U.S.C. | 1744 (1982); see id. at | 45.05 [2][a][v].

In United States v. Locke, 471 U.S. 84 (1985), the Supreme Court held that a mining claimant's failure to make a timely filing of the affidavit of assessment work or notice of intent to hold caused the claim to be abandoned and void, even though the filing was only 1 day late and it was clear that the claimants did not intend to abandon the claim. We have held that a late submission of the name and serial number of a claim inadvertently omitted from an affidavit or notice for a group of claims could have no effect. See Ethel Bilotte, 99 IBLA 159 (1987). In that decision we held that when a mining claimant inadvertently omits the name or the serial number of unpatented mining claims from an affidavit of assessment work or a notice of intention to hold, and there is no other means of identifying the claims on the document, BLM properly declares the claims abandoned and void for failure to comply with 43 CFR 3833.2. Id. Therefore, we must affirm BLM's decision declaring the Kleptomaniac claim, CMC-156116, abandoned and void because the proof of labor filed by appellant on December 3, 1982, stated neither the name nor the serial number of the claim and provided no other means of identifying it. See Arley R. Taylor, 86 IBLA 283 (1985); Peter Laczay, 65 IBLA 291 (1982); Philip Brandl, 54 IBLA 343 (1981).

[2] However, we reverse BLM's decision concerning the Gold Chance claim. The affidavit of assessment work for a group of claims appellant filed on October 29, 1984, listed the serial number for that claim. Although the notice failed to state the name of the claim, the serial number was adequate to identify the claim. See Homer F. Wilson, 101 IBLA 70 (1988); cf. Ethel Bilotte, supra.

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision declaring

the Kleptomaniac mining claim abandoned and void is affirmed and the decision declaring the Gold Chance mining claim abandoned and void is reversed.

Will A. Irwin
Administrative Judge

We concur:

R. W. Mullen
Administrative Judge

Franklin D. Arness
Administrative Judge